

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1131 OF 2016
IN
CRIMINAL APPEAL NO.415 OF 2016

Ankush Jyotiram Pawar
Versus
The State of Maharashtra

..Applicant
..Respondent

Mr. Sudeep Pasbola, Senior Advocate a/w Mr. Bhavesh Thakur i/by
Mr. Rahul Arote, Advocate for the Applicant.
Mrs. M. H. Mhatre, APP for the Respondent - State.

CORAM : B. R. GAVAI &
B. P COLABAWALLA, JJ.
DATE : 15th FEBRUARY, 2018

PC.

- 1] The Applicant has approached this Court for suspension of sentence and grant of bail during pendency of the Appeal.
- 2] Heard Mr. Sudeep Pasbola, learned counsel appearing on behalf of the Applicant and Mrs. M. H. Mhatre, learned APP.
- 3] The application is vehemently opposed by the learned APP on the ground that the two eye witnesses have falsely implicated the present Applicant.
- 4] As held by the Apex Court in the case of Niranjan Singh.

and another Vs Prabhakar Rajaram Kharote and others reported in (1980) 2 SCC 559 detailed elaboration of evidence should be avoided at the stage of grant of bail.

5] The prosecution case relies on the evidence of two witnesses, PW-1 – Jafar Shaikh, first informant and PW-10 – Banu Shaikh who is the aunt of the first informant.

6] The date of the incident is 6th May 2010, on which date, the present Applicant was attending the Court for giving evidence in Sessions Case No.852 of 2008. The said case pertains to murder of Kumar Dangat, wherein the main accused is Rahim Shaikh. The first informant Jafar Shaikh is the real brother of the said Rahim Shaikh. It is the prosecution case that after evidence of the present Applicant was recorded, in lunch recess, all the accused in this case assaulted Rahul Nair. In so far as role attributed to the present Applicant is that he has caught hold of the deceased and Sachin Dangat was assaulted.

7] The deceased Rahul Nair is said to be a close friend of accused No.1 – Rahim Shaikh in Sessions Case No.852 of 2008. Undoubtedly, both the PW-1 as well as PW-10 are interested witnesses, in as much as they are closely related to Rahul Nair. No doubt, only because

witnesses are interested, cannot be a ground to discard the evidence. However, evidence of such witnesses are required to be scrutinized with greater caution.

8] In so far as PW-1 is concerned, no doubt that he has implicated the Applicant in the FIR. However, in so far as PW-10 is concerned, her statement is recorded after six days of the incident. She has clearly admitted that she was not knowing the Applicant prior to the date of the incident. In that view of the matter, the absence of holding of identification parade, so as to establish the complicity of the present Applicant would be a relevant factor. The Applicant has also examined one Dadasaheb Jagtap as defence witness No.1. In his evidence he has stated that he was the Police Constable who was deputed in the Court so as to prevent any untoward incident taking place. He states that the present Applicant was present in the office of Special Public Prosecutor at 11:00 a.m. He had accompanied him to the Court hall of Mr. Mehre at 11:00 a.m. to 11.30 a.m. His evidence was recorded between 12.30 to 2:00 p.m. He has further stated that at 2.00 p.m., he was informed by the another Police Constable that some fighting was taking place between two groups and that he came to know. He further states that some of the witnesses were present there and shouting "where is Ankush Pawar". He further states that they were aggressive, he thought they may assault

Ankush Pawar, therefore, he took Ankush Pawar to the store room situate near lift. According to him, he telephoned another Police Constable namely Dhagare and asked him to stay there and that he would come there. Thereafter the said witness and the present Applicant stayed there for a period of one and half to two hour. He was thereafter informed by Constable Dhagare that they are required to go to Shivaji Nagar Police Station. Accordingly they took present Applicant to Shivaji Nagar Police Station at 4:30 p.m.

9] The evidence of this witness has been discarded by the Trial Court on the ground that he in his cross-examination, has not been in a position to give proper information. It is settled principle of law that the defence witnesses are also entitled to be treated on same pedestal as the prosecution witnesses. In so far as testimony with regard to the Applicant being in his company for one and half to two hour between 2:00 p.m. shall not be shattered. The incident is alleged to have taken place at around 2:05 p.m.

10] Another thing that is to be noted is that in Sessions Case No.852 of 2008, the Special Public Prosecutor had informed the learned Trial Court post the lunch, that the present Applicant was assaulted and as such is not available for cross-examination in the second half. It could

thus be seen that either statement made by the prosecution is that case was incorrect or the implication of the present Applicant in the case is not probable.

11] In any case, even the prosecution evidence is of the witnesses who are highly interested, the Applicant has already undergone sentence of almost 8 years. In that view of the matter, we are inclined to allow the application.

12] The Applicant is directed to be released on bail on furnishing solvent surety in the sum of Rs.25,000/- with one or more sureties in the like amount.

13] The Applicant shall not enter the area of Police Commissionerate, Pune as well as Pune Rural District during pendency of the Appeal. He shall intimate his address to the Shivaji Nagar, Police Station during the pendency of the Appeal and report to the police station where he would reside between 8.00 a.m. to 10.00 a.m. on every Monday.

[B. P. COLABAWALLA, J.]

[B. R. GAVAI, J.]